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Hawaii

October 5, 1943

MEMORANDUM OF CHRONOLOGY, HAWAIIAN HABEAS CORPUS CASES

The following is a chronology of the Seifert and Glockner cases:

1. On December 7, 1941, a few hours after the attack, the Governor of the Territory of Hawaii, pursuant to Section 67 of the Hawaiian Organic Act, issued a proclamation placing the Territory of Hawaii under martial law and suspending the privilege of the writ of habeas corpus. The Commanding General, Hawaiian Department, was named Military Governor and given virtually complete power over the government of the Territory.

2. On December 8, 1941 the Commanding General ordered the apprehension of Walter Glockner, a naturalized American citizen of German birth.

3. On April 6, 1942, after a hearing by a Military Board, the Commanding General ordered Glockner interned for the duration of the war.

4. On December 14, 1942, in the case of Zimmerman v. Baker, the Ninth Circuit Court of Appeals held that the detention of one Zimmerman pursuant to martial law was constitutional.

5. On January 11, 1943 the Commanding General ordered the apprehension of Erwin Reinhold Moritz Seifert, a naturalized American citizen of German birth.

6. On January 18, 1943 the Secretary of War, the Acting Secretary of the Interior and the Attorney General addressed a joint letter to the President transmitting to him an agreement reached between their three departments pertaining to the modification of martial law in Hawaii and returning many of the governmental functions to the civilian government. This letter clearly expresses the intention to continue the suspension of the privilege of the writ of habeas corpus.

7. On February 8, 1943, pursuant to this agreement, the civil governor of the Territory of Hawaii issued a proclamation providing that certain governmental functions were to be returned to the civilian government

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of the Territory thirty days after the date of the proclamation or on March 10, 1943. The language of this proclamation with respect to the suspension of the privilege of the writ of habeas corpus was not absolutely clear.

8. On April 3, 1943, after a rehearing, the Commanding General ordered that Glockner be continued in internment.

9. On May 15, 1943, after a hearing, the Commanding General ordered that Seifert be interned for the duration of the war.

10. On June 30, 1943 Seifert and Glockner filed petitions for writs of habeas corpus in the District Court of the Territory of Hawaii.

11. On August 2 and August 3, 1943 United States Attorney Angus Taylor appeared specially for the Commanding General, Lt. General Robert C. Richardson, Jr.

12. On August 6, 1943 the United States Attorney filed motions to dismiss the petitions on the ground that the District Court was without jurisdiction to issue the writs of habeas corpus in view of the existence of martial law and the suspension of the privilege of the writ. Oral argument was had on August 12.

13. On August 16, 1943 Judge Metzger handed down an opinion holding that the proclamation of February 3, 1943 restored the privilege of the writ of habeas corpus. Judge Metzger had not been furnished with a copy of the inter-departmental letter to the President of January 18, 1943 indicating that it was not the intention of any of the three Departments to restore the privilege of the writ. Judge Metzger, accordingly, denied the motions to dismiss the petitions and ordered the writs to issue.

14. On August 17, 1943 a Deputy U.S. Marshal attempted to serve the writs of habeas corpus on General Richardson. He went to General Richardson's headquarters at Iolani Palace but was not permitted to see the General. The Deputy Marshal then waited outside near the General's car and, when a few minutes later the General came out to enter his car, the Deputy Marshal attempted to serve the writs. He was physically prevented by Military Police but was not injured.

15. On August 21, 1943, following negotiations in Honolulu and in Washington between the War Department and the Department of Justice, the United States Attorney was authorized to accept service of the writs on behalf of General Richardson and did so. In these negotiations the Department of Justice took the position that the privilege of the writ of habeas corpus was validly suspended in the Territory of Hawaii but expressed the

wish that the question be litigated through the orderly process of the courts and that a final judgment be obtained in the District Court from which an appeal could be taken to the Ninth Circuit Court of Appeals and ultimately to the Supreme Court of the United States.

16. On the same day United States Attorney Taylor appeared in the District Court and endeavored to file returns to the writs of habeas corpus setting up as the legal justification for the detention of Seifert and Glockner the continued suspension of the privilege of the writ of habeas corpus. The bodies of Glockner and Seifert were not produced in court by General Richardson although the writs of habeas corpus, returnable that day, directed General Richardson to have both men personally in court. Judge Metzger declined to permit the United States Attorney to file the returns to the writs on the ground that returns to the writs could not be made in view of the failure of General Richardson to produce the petitioners. United States Attorney Taylor then requested an adjournment of ten days for the purpose of consulting with Washington and for the purpose of obtaining a copy of the inter-departmental letter to the President of January 18, 1943 which would indicate to the court that the proclamation of February 8, 1943 was not intended to restore the privilege of the writ. Judge Metzger refused to grant a ten day adjournment but set the case over until August 24 and ordered the bodies of the petitioners produced before him at that time in response to the writs of habeas corpus.

17. On August 24, 1943 General Richardson did not produce the bodies of the petitioners in court. United States Attorney Taylor again attempted to file returns to the writs but was not allowed to do so by Judge Metzger. Judge Metzger then instructed Mr. Taylor to prepare an order to show cause, returnable the following day, why the General should not be held in contempt of court.

18. On August 25, 1943, acting on instructions from the Department of Justice, Mr. Taylor informed the court that inasmuch as he was representing General Richardson, he asked to be relieved of any obligation to proceed against General Richardson in any way in the contempt proceedings. General Richardson did not produce the bodies of the petitioners. Judge Metzger thereupon found General Richardson in contempt of court and imposed a fine of \$5,000.

19. About fifteen minutes later the Provost Marshal personally served upon Judge Metzger a copy of an order issued that day by General Richardson called General Order No. 31 which generally forbids any person to engage in any proceeding in connection with a writ of habeas corpus in the Territory of Hawaii and specifically forbids any person, including Judge Metzger, from proceeding any further in the instant cases and providing that any person who should violate this order should be tried by a military court

and imprisoned not more than one year and/or fined not more than \$5,000.

20. After extensive discussions between the Departments of War, Interior and Justice, it was agreed that Lt. Colonel William Hughes, representing the War Department, and Edward J. Ennis, representing the Department of Justice, should proceed to Honolulu to endeavor to propose a settlement of the controversy acceptable to all parties and to permit the underlying question as to whether the privilege of the writ of habeas corpus has been constitutionally suspended to be litigated in the appellate courts in an orderly fashion.

It is to be observed that the legal issue which underlies the controversy between the Commanding General and Judge Metzger is not whether the privilege of the writ of habeas corpus is at the present time constitutionally suspended in the Territory of Hawaii. If that were the only issue, it would be possible to secure a determination thereof, no matter what Judge Metzger's decision, by appeal to the higher courts. The essential issue between the judiciary and the military in the Territory is whether the court has power to decide whether or not the privilege of the writ of habeas corpus is lawfully suspended. General Richardson has taken the position that the civil courts are without authority even to consider the question of whether the suspension of the privilege of the writ is constitutional on the ground that this is solely a matter for the determination of the Commanding General. Judge Metzger, however, has taken the opposite position that the question of the constitutionality of the suspension of the privilege of the writ is one for the courts.

Even this question could be determined on appeal were it not for a third difficulty which is that Judge Metzger has taken the position that he cannot proceed to make any determination, from which an appeal could be taken, until General Richardson brings the two interned men physically into the courtroom. General Richardson refuses to do this, and thus there is at the present moment an impasse. It is the hope of the Department of Justice that an arrangement can be perfected which will avoid this impasse and permit Judge Metzger to enter a final judgment from which appeal will at once be taken to the higher courts. If the negotiations now in progress in Hawaii are successful and the impasse is avoided, the entire question can probably be determined authoritatively by the Supreme Court.